IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9165 of 2005

For Approval and Signature:

HON'BLE MR.JUSTICE SHARAD D.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KASHAMBHAI USMANBHAI RATHOD - Petitioner(s)

Versus

THE STATE OF GUJRAT & 2 - Respondent(s)

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Appearance :

MR.SUBHASH G BAROT for Petitioner No(s).: 1.

NOTICE SERVED BY DS for Respondent No(s).: 1,2.

Mr.P.D.Bhate, AGP for Respondent No(s).: 3.

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CORAM : HON'BLE MR.JUSTICE SHARAD D.DAVE

Date : 09/08/2005

ORAL JUDGMENT

1. By filing this petition, the petitioner detenu has challenged the detention order dated 27.03.2005 passed by the District Magistrate,

Bhavnagar District in exercise of the powers conferred upon him under sub-section (2) of Section 3 of the Gujarat Prevention Anti-Social Activities Act, 1985 ("the Act" for short), as, the "bootlegger" and is required to be detained under the preventive detention, so that, he may not continue with such type of illegal activities.

2. Along with the detention order, the detenu was also served with the grounds of detention of the same date. In the said grounds, there is a reference to nine criminal cases which are filed under the Bombay Prohibition Act.

3. Learned advocate appearing on behalf of the petitioner detenu has submitted that there is delay in passing the detention order against the petitioner. The last offence was registered against the petitioner on 27.1.2005 and the detention order came to be passed on 27.03.2005. Learned advocate appearing for the petitioner has relied upon the decision of this court in the case of Elesh Nandubhai Patel V/s Commissioner of Police, 1997(1) GLH 381, wherein this Court has observed as under in paragraph 21 :

> " In the instant case, the last registered case is of May 20, 1996. The petitioner detenu was granted anticipatory bail by the competent Court. He was also granted regular bail subsequently. The impugned order of detention has been passed on November 05, 1996 i.e., after a delay of 5 months and 15 days. It is of course true that the detaining authority relied on two incidents of 2nd October and 10th October, 1996, both unregistered cases. I have gone through the allegations. I fail to understand if

> the allegations are really of such a grievous nature, why the cases have not been registered against the petitioner. There appears to be some substance in the contention of the petitioner that these two unregistered cases have been referred only with a view to cover up the gap or to give life to a stale case. This unexplained delay makes a ground of detention not proximate, vitiating the order of detention itself. If I am to buttress my findings, I would say the reference may be made to the decision of the Supreme Court in Anand Prakash V/s State of U.P., reported in AIR 1990 SC 516 and Pradeep Nilkanth Vs. S.Ramamurthy reported in 1993(2) Suppli SCC 61."

It is , therefore, submitted that the subjective satisfaction of the detaining authority is vitiated on the ground of delay in passing the detention order after the last incident and, therefore, the impugned detention order is required to be quashed and set aside.

4. On the other hand, Mr.Bhate, learned AGP has tried to support the impugned detention order passed against the petitioner. Affidavit-in-reply is filed on behalf of the respondent no. 2.

5. The impugned order came to be challenged by the petitioner detenu on various grounds. One of the grounds is the delay in passing the detention order. The last criminal case was registered with `D' Division Police Station, Bhavnagar being CR No.45 of 2005 against the petitioner on 27.1.2005 under Bombay Prohibition Act, and, therefore, delay in passing the detention order may reflect non-application of mind in

arriving at the subjective satisfaction by the detaining authority. It is true that the delay by itself in passing the detention order not fatal to the detention of the person and has to be looked into from the facts of each case. The facts of this case are squarely covered by the decision of this Court in the matter of Elesh Nandubhai Patel V/s Commissioner of Police, reported in 1997(1) GLH 381, the detention order, therefore, cannot be sustained and deserves to be quashed on this ground alone.

6. In view of what is stated above, the petition is allowed. The order of detention dated 27.03.2005 is quashed and set aside. The detenu Kashambhai Usmanbhai Rathod is ordered to be set at liberty forthwith if he is not required in connection with any other case. Rule is made absolute accordingly. Direct service is permitted.

(SHARAD D DAVE, J)

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